



Thomas Robinson

Call: 2003

trobenson@wilberforce.co.uk

Clerks' Details

+44 (0)20 7306 0102
practicemanagers@wilberforce.co.uk

Qualifications and Appointments

- One of three nominees for Restructuring / Insolvency Junior of the Year, Chambers Bar Awards, 2013
- "Highly commended" in Legal Week's "Stars at the Bar", 2013
- MA (Hons) Corpus Christi College Oxford
- Hardwicke Scholarship, Lincoln's Inn
- Judicial Assistant to Dyson LJ, 2005

"A skilled advocate and negotiator who consistently provides clear, pragmatic legal advice."

Chambers & Partners, 2019

Memberships

- Association of Pension Lawyers
- Insolvency Lawyers Association
- Society of Computers and Law
- Chancery Bar Association

Publications

- Co-editor of Kerr & Hunter on Receivers and Administrators, Sweet & Maxwell
- Judicial review in pensions cases—appropriate forum for pensions complaints (R (on the application of Grace Bay II Holdings SARL and others) v The Pensions Regulator) (2017) Lexis PSL
- Contributor to Cases Alerter for Corporate Rescue and Insolvency (Lexis Nexis).

Practice Overview

Thomas has a strong commercial / chancery practice with particular emphasis on pensions, insolvency and commercial litigation and arbitration. He has been recommended as a leading junior by The Legal 500 and Chambers UK for several years.

He has been nominated as "Insolvency / Restructuring Junior of the Year" at the Chambers UK Bar Awards and was 'highly commended' in Legal Week's "Stars at the Bar".

His six month placement with the commercial litigation department of a firm in Guernsey at the outset of his practice gave him experience of off-shore litigation as well as direct exposure to a wide range of clients.

Thomas has been recommended in the legal directories for a number of years. Recent entries include: *"An excellent junior with a very collegiate approach."* *"He's incredibly tenacious and a really good opponent. He's straight with his arguments and very, very impressive."* (Chancery Commercial, Chambers & Partners 2020) *"A skilled advocate and negotiator who consistently provides clear, pragmatic legal advice."* *"Super-bright."* (Pensions, Chambers & Partners 2019); *"Has a very efficient, linear mind, and structures his arguments extremely well."* *"He's extremely bright and makes everything easy to work through, even if it's complex - nothing rattles him. Very organised in his approach, he knows exactly what he's doing and when he's doing it."* (Chancery: Commercial, Chambers & Partners 2019); *"He is very thorough, concise and a great team player. He is very confident, persuasive and takes a very commercial approach."* (Restructuring / Insolvency, Chambers & Partners 2019) *"A shrewd junior who is an excellent team player"* (IT & Telecoms, Legal 500 2019). *"An outstanding team player with a really astute commercial ability"* (Insolvency, Legal 500 2019). *"He is highly intelligent and excellent on his feet"* (Pensions, Legal 500 2019).



Commercial

Thomas practises a range of commercial litigation and advisory work, including disputes regarding pension schemes, telecoms and information technology litigation, and other contractual disputes. Thomas has been involved in mediations both as junior and sole counsel.

Notable cases include:

- *Bellmare Holding Ltd v Wells* [2019] EWHC 703 (Ch) and [2019] EWHC 2193 (Ch): Application challenging jurisdiction under Article 5(3) of Lugano Convention. Acted at first instance and on appeal.
- *Courtwood Holdings SA v Woodley Properties Ltd & Ors* [2018] EWHC 2163 (Ch): Three week multi-million pound knowing receipt trial in the Chancery Division. Sole Counsel for three of 12 Defendants.
- *Munroe K Limited & Anor v Bank of Scotland plc* [2018] EWHC 3583 (Comm). Strike out raising limitation issues in context of claim for £50m damages for Libor manipulation and breach of duty in selling interest rate swaps.
- *Barker v Winter* [2018] EWHC 1785. Quantification of damages for deceit. The case is now cited by McGregor on Damages as authority on calculating pecuniary loss in deceit cases.
- *IMA v Ministry of Culture and Tourism of Turkey* [2018] EWHC 3285. High Court trial, defending allegations of fraudulent misrepresentation and inducing breach of contract.
- *CMHC v Irish Bank Resolution Corporation Limited (in Special Liquidation)* [2017] 2 All ER (Comm) 781 (CA) and [2014] EWHC 23109 Ch. Dispute over the implication of a term in a facility agreement not to hinder an exit strategy agreed between lender and borrower. Led by Alan Gourgey QC, instructed by Herbert Smith Freehills LLP.
- *A Technologies v B*: acting for defendants in relation to contract for internet optimization software where defendants faced claims of circa \$200m.
- *Hamilton-Smith & Wastell v CMS Cameron McKenna LLP* [2016] EWHC 1115 (Ch). Anti-suit injunction in claim of professional negligence by insolvency practitioners against solicitors arising out of the liquidation of Stanford International Bank in Antigua. Instructed by Clyde & Co LLP.
- *Courtwood Holdings SA v Woodley Properties Ltd & Ors* [2016] EWHC 1168 (Ch). Three day application to strike out arising out of proper construction of deed of assignment. Instructed by Isadore Goldman.

Company

Thomas has acted as sole and led counsel on company matters including petitions under s.994 of the Companies Act 2006. Thomas has also acted on cases concerning directors' duties including proceedings under the Company Directors Disqualification Act 1986.

Notable cases include:

- *Treetop Investment LLC v Falmouth House Freehold Company Ltd & Ors* [2017] EWHC 674 (Ch). Successful resistance of appeal raising questions of issue estoppel and abuse of process in the context of petitions brought under s.994 of the Companies Act 2006. Permission to appeal had been granted on the grounds of (i) whether Henderson v Henderson abuse of process applied to allegations of continuing breaches of duty, and (ii) whether issue estoppel applied where earlier proceedings were struck out for non-compliance with court orders, without consideration of the merits. Neither ground was upheld.
- *Re Desmond & Sons Ltd* [2015] Pens LR 1. Upper Tribunal (Tax and Chancery Chamber) decision concerning obligations of directors to maintain privilege on behalf of company once dissolved.
- *Healthcare Management Services Ltd v Caremark Properties Ltd* [2013] BCC 484. Dispute over shareholder creditors' rights to appoint administrators over their joint venture company.



Company continued

- *Panayotou v Falmouth House Freehold Company Limited* [2012] EWCA Civ 1174. Acted as sole counsel in successful resistance of appeal concerning proper construction of company documentation and agreements.

Insolvency

Thomas practises a wide range of corporate and personal insolvency work. He is currently co-editing and contributing to a new edition of Kerr & Hunter on Receivers and Administrators. In corporate insolvency he acts for officeholders, creditors and companies. He advises on issues from the interpretation of CVAs to administration expenses to office-holder remuneration.

Notable cases include:

- *Re Carlauren Group Limited* [2019]. Acting for the administrators of a luxury care home group, amid allegations of Ponzi schemes and misappropriation of assets.
- *Courtwood Holdings SA v Woodley Properties Ltd & Ors* [2018] EWHC 2163 (Ch): Three week multi-million pound knowing receipt trial in context of fixed charge receivership of property assets.
- *Fieldfisher LLP v Pennyfeathers Limited* [2016] EWHC 566 (Ch). Successful resistance of administration application on basis that the alleged debt was subject to an arbitration clause, and thus *Salford Estates (No.2) Ltd v Altomart Ltd* [2014] EWCA Civ 1575 applied by analogy.
- *Hamilton-Smith v CMS Cameron McKenna LLP* [2016] EWHC 1115 (Ch). Anti-suit injunction relating to claims arising from the liquidation of Stanford International Bank in Antigua. Instructed by the former office-holders.
- *Re Storm Funding* (in administration) [2014] Bus L R 454. Considered issues including the Parliamentary intention of the FSD regime and the insolvency rule against "double dipping". Acted for the Pensions Regulator with Raquel Agnello QC and Jonathan Hilliard.
- *Re Nortel GmbH and Others* [2014] AC 209, [2013] UKSC 52, [2011] EWCA Civ 1124 & [2010] EWHC 3010. Successful resistance of application by administrators of Nortel and Lehman Brothers in the High Court for declaration that an FSD and CN issued under Pensions Act 2004 to insolvent companies did not give rise to any right to recovery. Briggs J. held they gave rise to administration expenses which was upheld by Court of Appeal in October 2011. In July 2013 the Supreme Court decided that FSDs give rise to provable debts. Listed by the Lawyer in their 'Top 20 cases of 2012'.
- *Re Calibre Solicitors Limited* (in administration) [2014] All ER (D) 187. Consideration of proper construction of Insolvency Rule 2.109(1B).
- *Napleton v Hewitt* [2013] EWHC 2778 (Ch). Successful resistance to challenge over CVA Supervisor's treatment of proof of debt.
- *Caldero Trading v Beppler & Jacobson Ltd* [2012] EWHC 4031 (Ch). Concerned extent of provisional liquidators' powers to obtain documents under various court orders. Acted for provisional liquidators from BDO appointed over a UK company owning major Montenegro hotels.

International Arbitration

Tom's international arbitration practice includes disputes under the LCIA and ICC Rules, and applications to challenge arbitration awards under the Arbitration Act 1996.

Recent experience:

- Currently acting as part of a three counsel team in an ICC Arbitration in Geneva arising out of gas supply contracts.
- Acting for the Claimant in a \$20m ICC arbitration arising out of the Madoff fraud (led by Alan Gourgey QC).



International Arbitration continued

- *Fieldfisher LLP v Pennyfeathers Limited* [2016] EWHC 566 (Ch). Successful resistance of administration application on basis that the alleged debt was subject to an arbitration agreement. Issues included the effect of a prior arbitration and of the arbitration agreement.
- Advising on an application to set aside an arbitration award of the London Beth Din.
- An arbitration of a dispute arising out of property surveying in the UK, under LCIA Rules.

Tom has also written and spoken on the interrelationship of arbitration and insolvency.

Pensions

Thomas acts across a wide range of pensions matters, on behalf of scheme trustees, scheme members, employers and bodies such as the PPF and Pensions Regulator. He has advised on matters from the operation of section 67 of the Pensions Act 1995 and section 37 of the Pension Schemes Act 1993 to trustees' duties and the PPF Levy.

He has a particular interest in the interplay between pensions and insolvency law, and has written on this topic for pensions and insolvency publications. He frequently advises insolvency practitioners in relation to pensions issues. He is also instructed on rectification matters, both as sole counsel and as part of a team (for example acting in 2018 for the representative beneficiary in a claim by Honda Motor Europe Ltd to rectify scheme documentation from 1986).

Tom is recommended as "**One of the best pensions regulatory lawyers in the field**" (Legal 500 2016). He has been instructed by the Pensions Regulator in complex multi-jurisdictional commercial cases seeking Financial Support Directions (FSD) and Contribution Notices (CN) under the Pensions Act 2004, raising issues of commercial and insolvency law. These include Silentnight, MG Rover, Nortel Networks, Lehman Brothers, Michel van de Wiele NV ("Bonas"), Carrington Wire and Desmond & Sons Limited. Tom has appeared before the Regulator's Determinations Panel, the Upper Tribunal, the Court of Appeal and the Supreme Court as a result of these instructions. He has also been instructed as counsel to the Determinations Panel of the Pensions Regulator, including in cases concerning skilled persons reports under s.71 of the Pensions Act 2004, the removal of scheme trustees, and in the 'Box Clever' case.

Separately, Tom has advised other parties to "moral hazard" investigations, and acted for trustees and companies more generally in relation to pension scheme matters.

Notable cases include:

- *Re Chas A. Blatchford & Sons Pension Scheme* [2019] EWHC 2743 (Ch). First pensions rectification case to consider the Court of Appeal's guidance in FSHC on rectification for common mistake.
- *ARG Realisations 2016 Ltd v Stuart* [2019] EWHC 1265 (Ch): Part 8 Rectification claim, with consideration of use of confidential opinions by the court.
- *R (on the application of Grace Bay II Holdings SARL and others) v The Pensions Regulator* [2017] EWHC 7 (Admin), [2017] All ER (D) 29 (Jan). Application for Judicial Review of decision by the Pensions Regulator to issue a second Warning Notice in the Silentnight case. Application successfully resisted on grounds of alternative remedy.
- Ongoing instructions in regulatory investigations that remain confidential at present.
- *Re Carrington Wire DB Pension Scheme*. Successful pursuit of Contribution Notice against individual under "material detriment test" of s.38A PA 04, and settlement of £8.5m with Russian owners of UK wire company, March 2015. Acted for Pensions Regulator.
- *Re MG Rover Group Limited*. Regulatory proceedings seeking FSD. Case settled in 2014.
- *Re Desmond & Sons Limited* [2010–2015]. First issue of CN to individuals, in sum of £1m, from use of MVL to trigger employer debt to pension scheme. Acted for Pensions Regulator at hearing before Determinations Panel, Upper Tribunal (2010 and 2014) and in the Court of Appeal (Northern Ireland, 2012). Listed for 3 week hearing in May 2015. Settled during week one.



Pensions continued

- *Re Storm Funding (in administration)* [2014] Bus L R 454; [2014] Pens LR 73, [2013] EWHC 4019 (Ch). Considered issues including the Parliamentary intention of the FSD regime and the insolvency rule against "double dipping". Acted for the Pensions Regulator with Raquel Agnello QC and Jonathan Hilliard.
- *Re Nortel GmbH and Others* [2014] AC 209, [2013] UKSC 52 & [2011] EWCA Civ 1124 & [2010] EWHC 3010. Successful resistance of application by administrators of Nortel and Lehman Brothers in the High Court for declaration that an FSD and CN issued under Pensions Act 2004 to insolvent companies did not give rise to any right to recovery. Briggs J. held they gave rise to administration expenses which was upheld by Court of Appeal in October 2011. In July 2013 the Supreme Court decided that FSDs give rise to provable debts. Listed by the Lawyer in their 'Top 20 cases of 2012'.
- *Trustees of Lehman Brothers Pension Scheme v Pensions Regulator* [2013] 4 All ER 744; [2012] 085 PBLR (040). Court of Appeal and Upper Tribunal considered for the first time the scope of the Regulator's power to issue FSD. Led by Raquel Agnello QC.
- Box Clever. Decision of the Determinations Panel to issue FSD to members of ITV Group, see 26.1.12. Acted for Determinations Panel of the Pensions Regulator (2012).
- Michel van de Wiele ("Bonas"). First decision of the Upper Tribunal concerning the exercise of the Pensions Regulator's moral hazard powers. Acted for the Regulator on the target's unsuccessful application to strike out the Regulator's case (2011).
- Lehman Brothers. Decision of the Determinations Panel, see 17.9.10. Acted for Pensions Regulator with J. Hilliard, led by Raquel Agnello QC (2010). Also in preliminary hearings before Upper Tribunal (2012 and 2014).
- Nortel Networks. Decision of the Determinations Panel, see 25.6.10. Acted for Pensions Regulator with J. Hilliard, led by Raquel Agnello QC (2010).

Professional liability

Tom is instructed on professional liability claims including against insolvency practitioners, solicitors and trustees of pension schemes, as well as other professionals engaged in his practice areas of pensions, insolvency and commercial litigation.

He was recently instructed on a claim against pension scheme trustees and their advisers in relation to the treatment of a debt under section 75 of the Pensions Act 1995.

He was led by Lexa Hilliard QC and Elspeth Talbot-Rice QC in the case of *Stanford Bank v Nigel Hamilton Smith, Peter Wastel & Anr*, acting on behalf of the former joint liquidators of Stanford Bank, Antigua, in connection with a negligence claim that has been issued against them in Antigua by the Bank, acting by the current joint liquidators. The matter included an anti-suit injunction hearing in London ([2016] EWHC 1115 (Ch)) and hearings in Antigua.

He has acted for and against administrators facing claims of misfeasance, including for decisions to trade during administration.

He has also acted in relation to claims against pension scheme trustees for breach of duty, including claims seeking their removal under the Pensions Act 1995 and claims under s.16 of the Pensions Act 2004 alleging misuse and misapplication of scheme assets.